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Attorney's Docket No. 1018798-000398

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Olle Carlbark et al.

Application No.: 09/529,638

Filed: June 5, 2000

For: A WAIST BELT FOR ABSORBENT
GARMENTS

) **MAIL STOP APPEAL BRIEF -**
) **PATENTS**

) Group Art Unit: 3761

) Examiner: CATHERINE L.
) ANDERSON

) Confirmation No.: 9552
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REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
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Sir:

This Reply Brief is filed in response to the Examiner's Answer and the Notice of Non-Compliance dated February 5, 2007.

I. Status of Claims

The claims currently pending in this application are Claims 4-30. Claims 4, 5, 6, 10, 16, 21, and 26 are independent. Claims 4-20 and 26-30 are allowed. Claims 1-3 are canceled. Claims 21-25 are finally rejected and are the subject of this Appeal.

II. Grounds of Rejection to be Reviewed

Claims 21 - 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Statutory Invention Registration No. H1440, hereinafter *New*, in view of U.S. Patent No. 5,706,524, hereinafter *Herrin*.

III. Argument

The Official Action finally rejects Claim 21 under 35 U.S.C. § 103(a) as being unpatentable over *New* in view of *Herrin*. On page two of the Official Action dated November 2, 2004, it is stated that “*New* discloses all aspects of the claimed invention with the exception of stiffening elements.” It is further stated that “*Herrin* discloses a garment having waist belts 30 that have a stiffening material 33, as shown in figure 4, that varies in the cross-direction of the belts 30.” The Examiner proposes that it would have been obvious to modify *New* to include a belt having *Herrin*'s elastic strips 33.

***New* Does Not Teach A Rectangular Belt:**

In the Appeal Brief, Applicants argued that *New* is concerned with a belt having particularly shaped laterally extending edges, and provides a preferred formula for determining the belts which meet the desired criteria (column 12, line 66 – column 14, line 55). *New*'s belt has means for causing one laterally extending edge to be longer than that of the other laterally extending edge when the belt is encircled about a wearer. The belt is generally arcuate in shape and has a curvilinear length (column 10, lines 17-19). This configuration allows *New*'s article to better fit and more discretely conform to the contours of the user, thereby being less noticeable under one's clothing.

Applicant further argued that *New*'s purpose would be destroyed by including additional elements in the waistband because the specifically intended arcuate design of *New*'s belts would be destroyed by incorporating elastics in it. Therefore,

one of skill in the art would not have been motivated to make modifications of *New* in view of *Herrin* as suggested by the Examiner.

In response thereto, the Examiner cites in the Examiner's Answer that one of the embodiments of *New* is a rectangular belt, as seen in Figure 9A.

However, the Board's attention is directed to the fact that even the allegedly "rectangular" embodiment of Fig. 9A/9B of *New* is intended to be curved in an arcuate shape when worn. Specifically, the Fig. 9A/9B embodiment includes two elastic patches shaped like a truncated triangle. The elastic patches are designed so as to cause the belt to curve in an arcuate shape when being worn. See column 18, lines 30 through column 19, line 24. Note that the specification refers to Figs. 9A **and 9B** as the third embodiment. Fig. 9B shows the desired arcuate shape.

Thus, even though in the relaxed state the belt of Figure 9a of *New* is rectangular, it is intended to be worn in an arcuate manner. Accordingly, Applicants continue to submit that the elastics of *Herrin* would be inconsistent and likely destroy the purpose of the belt of *New*. The elastics of *Herrin*, if incorporated into the *New* belt, would conflict with the elastics in the Fig. 9A/9B embodiment. Furthermore, with regard to the other embodiments of *New*, the *Herrin* elastics would interfere with *New*'s purpose of having an arcuate belt. Note *New* at column 1, lines 52 – 52: "Particularly, a rectangular belt does not conform to the divergence of the hips."

Therefore, one of skill in the art would not have been motivated to make modifications of *New* in view of *Herrin* as suggested by the Examiner.

The Examiner has not shown why a skilled person would have looked toward *Herrin* for direction in modifying *New*:

The Examiner further argues that one of ordinary skill in the art would have been motivated to include the elastic elements of *Herrin* and the belt of *New* to provide the belt with improved stretch and recovery characteristics, as taught by *Herrin* in column 2, lines 50-52, thus providing the belt of *New* with a more secure fit.

However, the Board's attention is directed to the fact that *New* has incorporated elastics in at least some of its embodiments. See, in particular, the triangular shapes in Figures 9A/9B. Thus, *New* had already contemplated an embodiment having elastics, presumably to provide the belt with improved stretch and recovery characteristics. There is no suggestion in *New* that the elasticized embodiments were insufficient in any way. Accordingly, if *New* wanted to provide the belts with stretch and recovery characteristics, *New* would have used the elastic pieces shown in Figures 9a and 9b, not the elastics of *Herrin*.

Conclusion:


New and *Herrin*, alone, or in combination, would not have led one of skill in the art to the garment as defined in the rejected claims given the differences between the two applied references and the lack of motivation to combine the references. Further, even if one were to combine the references, the claimed article would not result. In view thereof, Applicants respectfully submit that this rejection of Claims 21 – 25 should not be allowed to stand.

Accordingly, Applicants continue to submit that the rejection is improper and should be reversed.

Respectfully submitted,

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EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None